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July 28, 2005

Henry Walker
(615) 252-2363
Fax (615) 252-6363
Email hwalker@boultcummings.com

Mr. Ronald L. Graham
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Docket 05-00105

Dear Ron:

On behalf of Tennessee Wastewater Systems, Inc. we wish to file the attached comments on the proposed Rulemaking for the Regulation of Wastewater Companies.

Thank you for your consideration of our comments.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/aai

Enclosure

cc: Charles Pickney, Jr.

-.07 Financial Security

(1)

It is urged that a new subparagraph be added that provides for the TRA to preempt or overturn any unreasonable local surety requirement, as it is statutorily empowered to do by T.C.A. 65-4-108.

(2)

We believe it is unnecessary and unduly complicated to determine the security amount using the Uniform System of Accounts (USOA).

A simpler and more effective system should base the amount of required security on variables including, but perhaps not limited to, the size of the project, the size and capitalization of the company, the compliance history of the company, and the number and duration of the company's other wastewater utility installations. The TRA may also wish to reserve the right to waive the surety requirement for wastewater projects by proven providers that are small in size or scope.

(4)(a)(ii)

The TRA cannot convert a letter of credit to cash and seize the cash without holding a hearing first. This rule should include a hearing requirement.

(6)

The requirement to maintain an escrow account is crucial for success in providing wastewater utility service. We endorse including these provisions in the final rules.

(6)(a)(iv)

The escrow account should be dedicated only for maintenance expenses and not used for capital projects such as "future expansion needs."

-.09 Receiverships

It is doubtful that the TRA has statutory authority to act as a receiver in the event of a bankruptcy.

-.10 Safety Program

The rules can be streamlined by the elimination of this section, as its requirements are redundant with those already enforced by other administrative agencies.

-.11 Customer Relations

(2)

We recommend striking the first sentence and replacing it with these two sentences:

The utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints. If the utility is required to report a service

-.04 Data To Be Filed

(3)(b)

It is more appropriate that the design engineer, rather than TDEC, certify that the utility was installed according to plans. In addition, the utility should provide the TRA with a set of as-built drawings.

(3) *misnumbered*

This rule attempts to rewrite the TRA's existing statutory mandates. The obligation to provide service, or make extensions of service, is set forth in T.C.A. §65-4-114(2). The TRA cannot change that statutory standard. Similarly the terms under which the TRA may cancel a certificate or award a certificate to a competing utility are established in T.C.A. §65-4-201, 202 and 203. Here again, the rules cannot change those statutory requirements. See also Tenn. Ag. Opinion No. 94-144 (1994) and Peoples Tel. v. TPSC, 393 S.W.2d 285 (1965) which hold that a utility need not have facilities in place to be offering service in its service area and to be protected from competition. Finally, there are good policy reasons for having one large utility serve an area rather than having several small utilities serving the same area. In the long run, customers will have better, cheaper, and more reliable service from one large utility. It is important that the TRA rules reflect what is in the best long-term interests of customers and not in the short-term interest of residential or commercial developers.

(4) *should be 5*

We suggest this paragraph be replaced with a requirement to file with the TRA those contracts a utility makes with a developer and those it makes with a unit of state or local government.

-.05 Maps and Records

(1)

The second sentence should be struck that begins with, "Title to all physical assets..." This would prevent a utility from borrowing money using the assets as collateral. There is already statutory oversight regarding the taking on of debt by utilities, (T.C.A. §65-4-109), and the proposed provision contravenes at least one local requirement that the utility have ownership of the wastewater system.

-.06 Adequacy of Facilities

(2)

We recommend that the inspection records be maintained by a utility for three years instead of two, to make this regulation consistent with some local requirements.

failure or emergency to the TDEC then the TRA shall be sent a copy of that said notification

-.12 Customer Billing

(1)

This paragraph should be replaced with straightforward language linking the billing method to that which is set out in the utility's approved tariff.

-.13 Denying Service

(1)

We recommend deleting the last two sentences of this paragraph. This is standard information in the customer's subscription service agreement and so is not necessary to repeat it on the termination notice.

(3)

Because some current customers lack a water cutoff valve, we recommend that this provision be written in a prospective manner.

(4)

We recommend deleting this paragraph. Outside Chattanooga, virtually all water providers in Tennessee are municipalities and utility districts over which the TRA has no jurisdiction.